Office and Professional Employees International Union, AFL–CIO *and* John B. Connolly. Case 1–CA–25940

April 27, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On June 18, 1991, Administrative Law Judge Benjamin Schlesinger issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel resubmitted to the judge his brief in support of the judge's decision.

The National Labor Relations Board had delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions,[2] and to adopt the recommended Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We agree with the judge that International Representative Connolly, an employee of the Respondent Union, was engaged in union activity in running for office and that the Respondent violated Sec. 8(a)(3) and (1) of the Act by discharging him as an employee ''because he exercised his right as a member of Local 6 to run for office in that local.'' In running for office, Connolly was seeking to become a member of the internal government of Local 6, a position in which he could play a role in collective bargaining and in the representation of Local 6 members. By discharging Connolly in an attempt to discourage him from engaging in those union activities, the Respondent violated Sec. 8(a)(3) and (1). Further, we find no merit in the Respondent's contention that the Board's decision in *Retail Clerks Local 770*, 208 NLRB 356 (1974), requires a different result. In that case, the Board reversed the judge's finding of an 8(a)(3) discharge on the ground that an employee of a union ''has no protected right to engage in activities designed solely for the purpose of influencing or producing changes in the management hierarchy.'' Id. at 357. In the present case, unlike in *Retail Clerks*, Connolly was not an employee trying to influence or change the management hierarchy of his employer (the International), but a member running for office in his own local union. Because the Respondent discharged Connolly for his activities as a union member, activities wholly unrelated to his duties as an employee, we find *Retail Clerks* inapposite.

[2] The Respondent excepts to the judge's findings that Connolly's October 12, 1988 letter protesting International President Kelly's order forbidding weekend travel by International representatives constituted concerted activity. In this regard, the Respondent asserts that, assuming International representatives Orr and Kirby's versions of the events at issue are true, the letter did not constitute concerted activity because neither Orr nor Kirby joined Connolly in protesting the order. We disagree. Even assuming that the Respondent's version of events is correct, Kirby, on being informed of the new policy, stated to Connolly that ''the way it [Kelly's directive] sounds, I don't really agree with it.'' Further, when Connolly said that he was thinking about writing a letter to Kelly about the policy, Kirby did not discourage him, but said that he [Kirby] would call the International. In these circumstances, where Kirby clearly shared Connolly's concern about the travel policy, knew that Connolly was going to write a letter to the International about it, and where the letter by its contents informed Kelly that Connolly was expressing the concerns of other employees as well as his own, we find, for the reasons given by the judge, that the letter was a logical outgrowth of Connolly's discussion with Kirby and that it constituted concerted activity.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Office and Professional Employees International Union, AFL–CIO, New York, New York, its officers, agents, and representatives, shall take the action set forth in the Order.

William F. Grant, Esq., for the General Counsel.
Joseph E. Finley, Esq., of Baltimore, Maryland, for the Respondent.
John B. Connolly, of Manomet, Massuchusetts, for the Charging Party.

DECISION

Findings of Fact and Conclusions of Law

BENJAMIN SCHLESINGER, Administrative Law Judge. Respondent Office and Professional Employees International Union, AFL–CIO (Respondent or International) discharged Charging Party John B. Connolly on October 31, 1988. The complaint in this unfair labor practice proceeding, which issued on September 11, 1989, alleges that Respondent violated Section 8(a)(3) and (1) of the National Labor Relations Act, 29 U.S.C. § 151 et seq., because of Connolly's concerted and protected activities of protesting having to remain away from home on weekends and his union activities in running for office in Respondent's Local 6. Connolly filed his unfair labor practice charge against Respondent on November 14, 1988, and the hearing was held in Boston, Massachusetts, on February 20–22, 1990.

Jurisdiction is conceded. Respondent admits, and I find, that it is a labor organization, an unincorporated association, with an office and place of business in New York, New York, and with other places of business throughout the United States, including New England, where it is engaged in the business of a labor organization, representing employees in bargaining with employers with respect to wages, hours, and other terms and conditions of employment.

Annually, Respondent collected and received revenues, dues, and initiation fees in excess of $50,000 directly from points outside New York. I conclude that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. I also conclude that Office and Professional Employees International Union, Local 6, AFL–CIO (Local 6), is a labor organization within the meaning of Section 2(5) of the Act. Connolly was employed by Respondent in 1976 as an International representative. He reported to Respondent's director of organizing and was responsible for servicing various New England local unions which did not have full-time representatives to handle their

negotiations of contracts and processing of grievances and arbitrations. In late 1984 Connolly became the assistant director of organization and was assigned to organize the professional staffs employed at the Boston and Amherst campuses of the University of Massachusetts (UMass), as well as the medical center in Worcester. That campaign ended unsuccessfully in May 1986 with a loss in an election conducted by the Massachusetts Labor Relations Commission. Following that, Connolly continued to process challenges and unit rulings and began to plan for future organizing efforts, including making an assessment of a second try for the clerical and secretarial employees of the Cook County court system in Chicago, where he had led an unsuccessful campaign in 1984.

Connolly continued to perform various assigned functions for Respondent but resigned his position in October 1986 after another unsuccessful campaign, this time at the Bucks County Community College in Pennsylvania, and returned to being an International representative. Thereafter, he worked on a proposed merger of Respondent's locals in Maine and New Hampshire; and in about February 1987 he was assigned to take over from another International representative, who was to work as a full-time organizer for a Blue Cross/Blue Shield campaign, the function of servicing all the locals in the Northeast.

His employment during 1987 was unexceptional. At the end of the year he received a bonus of 1 week's pay and some time after he received a wage increase for 1988. On or about May 20, 1988, Connolly announced to James Mahoney, Local 6's business manager and an International vice president, that he was interested in running for the office of the Local's secretary-treasurer. Mahoney questioned why Connolly would want to run for that position, indicating that the incumbent had no intention of resigning. He asked whether Connolly would be interested in running for another position such as recording secretary or for the business manager of another local union. Connolly said that he was not interested in another position. He wanted to get into a ''constitutional position'' in Local 6 and succeed Mahoney when he retired, because there were no experienced people in Local 6. Mahoney promised to get back to Connolly.

It is Connolly's threat to the institution that the General Counsel contends was one of the reasons for the alleged discrimination which is the subject of the complaint. In late August, Connolly was assigned by Mark Reader, Respondent's director of organizing, to report to Respondent's locals which had agreements with the Tennessee Valley Authority (TVA) to put on one-on-one internal organizing programs. Reader told Connolly that the program was intended to increase Respondent's membership, which in those right-to-work States had decreased to much less than 50 percent, in some cases as low as 10 percent. Reader said that Connolly would be in Tennessee for 5 or 6 months. Connolly questioned the choice of him, and Reader somewhat agreed, noting that Connolly's thick Boston accent might not be received too well in the South. Reader said that he was going to try to dissuade Respondent's president, John Kelly, from sending Connolly, but Reader called back to say that Kelly wanted Connolly in Tennessee right away. Connolly said that he ''smell[ed] a rat'' because he had made known his intention to run for the Local 6 office, and the timing was such as to interfere with nominations, which were going to be held in early October. Reader promised to continue to discuss the matter with Kelly, but Kelly wanted Connolly to go. Connolly told Reader to tell Kelly that he would be ''thrilled'' to go to Tennessee; and Reader called back to say that he had relayed the message to Kelly, who said: ''[D]on't come home every weekend.''

Connolly testified that in all his prior work experience when he was assigned to work out of town, he had always come home on the weekends, and he was never restricted from returning home on the weekends. He admitted that the International for years had a rule about not returning on weekends, but said that the rule had been uniformly ignored. No one testified to the contrary, but Bill Kirby, another International representative, acknowledged that he did not go home when he was working on an ongoing campaign which required him to remain away. In any event, Connolly travelled to Knoxville on the day after Labor Day 1988, and talked with Faye Orr, the International representative assigned to Tennessee, about where he was to be based. Orr said that he could use her office in Chattanooga and that he was not going to be able to accomplish very much on the one-on-one program because the employees were much more interested in how the ongoing negotiations with the TVA were progressing than with this new program. Because Connolly could not get started with that program, she asked him to take over negotiations for a manufacturing company in Chattanooga. Connolly agreed to do so, as long as Reader and Kelly concurred.

Connolly went home that weekend, Friday, September 9, and began to prepare papers for his campaign for secretary-treasurer. He did not return to Tennessee the following week, suffering a ''spell'' which resulted in his having to take a stress test. During the week, on September 16, Reader telephoned him to say that Kelly no longer wanted Connolly to spend 5 or 6 months in Tennessee but wanted him to prepare for two 2-weekend programs. Connolly questioned the change of plans, indicating that the logistics alone would take much longer than two weekends. Nonetheless, Reader ordered that these programs commence immediately. Connolly said that he was suspicious of the change and that he was going to write a letter about it. He did so, to Kelly, complaining of receiving a harassing telephone call from Reader and questioning what Kelly wanted of him, and when, and accusing that: ''This confusion or indecision makes me suspicious that local and internal political considerations or even outright discrimination may have been a factor in my being reassigned to TVA et al.''

Reader replied on September 27 that he had not intended to harass Connolly and that Connolly had been assigned to TVA because only a senior staff person could deal with the complex issues. In the meantime Connolly continued to go to Tennessee each week and return home each weekend, where he worked (he testified) on his upcoming election campaign. At a Local 6 meeting on October 4, Connolly was nominated. He accepted the nomination in a phone call to Mahoney the next day, during which he asked Mahoney for an accurate account of Local 6's membership so that he could do a general mailing. He sent a followup letter to Mahoney the next day. That day, also, Reader telephoned Connolly to remind him of the earlier conversation about not traveling on weekends; and Reader threatened that, if Connolly did not stay in Tennessee that weekend, Kelly

might consider his going home insubordination. Connolly replied that it was unfair for Reader to have called on a Thursday for him to remain in Chattanooga over a long holiday weekend (Columbus Day was to be celebrated that Monday), when Connolly had a wedding to go to on Saturday, as well as campaigning. Connolly mentioned the campaign in a letter he wrote to Kelly that day, stating:

> My instincts tell me that your reasons for insisting that I stay in Chattanooga, are motivated by demands from OPEIU Local 6 that I discontinue my campaign to become Secretary-Treasurer of that local of which I am a member.
>
> The International Constitution gives me the right to get fully involved in the affairs of the local in which I carry my membership card.

Connolly went home that weekend and returned to Tennessee the following Tuesday. He returned home the following weekend and received a letter from Kelly, dated October 6, stating:

> It has come to my attention that you have been nominated for office in OPEIU Local No. 6. As a member, you have every right to seek election.
>
> As you well know, your duties as International Representative require you to be available to service all our Locals in the United States. Should you be elected to office in a Local Union, the duties of that office and your present duties conceivably will not be compatible.
>
> The only purpose of this letter is to make you aware of the problems you may be facing in attempting to be a Local Union Official and an International Representative.

In addition, the week before Connolly received a memorandum from Reader, which he wrote on October 6 (the same day that Kelly wrote the above-quoted letter), stating:

> When you are out-of-town on assignment and the assignment goes beyond one (1) week, representatives should not plan on coming home every weekend.
>
> This practice has raised organizing and servicing expenses enormously and lengthened some assignments. In the future, therefore, the International will only pay for travel every other weekend.

Connolly spoke with Orr, who did not like this memorandum any more than did Connolly, who disliked it intensely. Orr, however, did not join in what was soon to be Connolly's strong objection. She said that he was much more of a rebel than she was. However, Connolly spoke with Kirby, who said that he was going to call Kelly the first thing on Monday morning and tell him what he thought of the memorandum, that he did not mind being on the road 4 or 5 nights during the week, but he relished his weekends home. Connolly said that he would be writing a letter, which he did on October 12, complaining to Reader that he had raised some questions about Reader's memorandum with some of the staff ''and we feel very little thought was put into something that would so drastically alter our life styles.'' He set forth estimated figures showing that the International would actually lose money if the representatives were to stay out of town, and he concluded:

> Since there is no apparent savings, it can safely be assumed that your directive is null and void unless political retaliation was President Kellys' [sic] only motive, as I am the only representative immediately effected [sic].

When Orr called Kelly earlier to protest the memorandum, Kelly told her that his memorandum was too broad, that too many complaints were being lodged against it, that Kirby had called to complain, and that he had decided that the memorandum should be ignored. But Kelly's reply to Connolly on October 19 was different:

> You are right, John. I do want to drastically alter your life style.
>
> I do not think that it is fair to the people who pay our salaries that you start to work on Tuesday and end your work week on Thursday afternoon. I do not know any of our members who have such a life style.
>
> On this assignment, you have taken what should have been done in four days and parlayed it into a 44-day program. If you think that is saving money, you are wrong. Your cute set of figures are just that—cute.
>
> You know the old saying—''Numbers don't lie.''
>
> You can be assured that there was no ulterior motive in my trying to have you do what you have been hired for.
>
> John, you have not taken to heart the two verbal warnings you have received in your meetings with me. I think that we better get together soon.

Connolly was not one who stepped lightly on the toes of his superiors. He used sledgehammers. While stirring up a confrontation over Kelly's memorandum, he also started one with Mahoney. Previously, he had asked Mahoney to tell him how many members there were in Local 6, and Mahoney had replied that there were about 3200. Connolly checked Mahoney's membership accounting to the International's secretary-treasurer and found that there was a discrepancy. Connolly concluded that ''something is wrong'' and complained to Mahoney that: ''The amount of monies unaccounted for over the last 8 years could be in the hundreds of thousands of dollars and the membership and myself would like to know how it was expended.'' He charged Local 6's executive board and trustees with being part of this violation of the Local's bylaws and International's constitution and requested that Mahoney seek a voluntary trusteeship or Connolly would seek an involuntary trusteeship.

Connolly also wrote to Kelly on October 24 complaining about each and every allegation of Kelly's October 19 letter, quoted above. He specifically denied squandering members' money and disputed the claim that he had been given two verbal warnings. The next day, the Local 6 election was held. Connolly was defeated by a huge margin, but indicated to the person running one of the polls that he was unhappy with the notice of election that had been given and would probably be filing objections to the election. On October 28 Connolly wrote a letter to the executive board of Local 6 explaining his reasons for running, making a number of attacks against Mahoney particularly, requesting internal union re-

form, and threatening to challenge the results of the election. At the same time, Reader sent Connolly a telegram, dated October 28, summoning Connolly to a meeting at the International's headquarters on October 31, which Connolly did not hear about until October 31.

Connolly immediately flew to New York. Before the meeting with Kelly and his administrative assistant, he saw his letter of discharge sitting on the desk and read it. The ensuing meeting was short. Connolly said that it seemed to him that he was going to end up in the trash heap, and Kelly responded that Connolly was not going to be the trash. Kelly said that a letter was being prepared for Connolly, to which Connolly replied, having already seen the letter, by calling Kelly a ''fucking asshole,'' prompting Kelly to tell Connolly to get out of his office. The letter that Reader sent to Connolly on November 4 was the same as the one that Connolly had seen, except that it added some lines characterizing the argument that occurred on October 31.

Reader's letter accused Connolly of having ''a very negative, unproductive attitude which has clearly been reflected in your work performance.'' It criticized Connolly's performance at UMass and Chicago ''wherein you demonstrated an inability to work with and direct staff in a cooperative effort.'' It accused him of not having understood that his resignation as ''deputy'' director of organization had been accepted provided that his performance and attitude improved, but there has been no improvement. Instead, he antagonized the local union leadership in the Bucks County Community College campaign, and they requested that he not be reassigned to a rerun election. He took time off for illness when he was in Tennessee, and accused Reader of harassing him when Reader called to find out how Connolly was. He refused to work weekends, even though Reader said that such refusal would constitute insubordination. Reader concluded:

> Overall, your record has set a poor example for the rest of the staff. You seem to feel you can flaunt all the rules and set your own agenda. This would not be tolerated in any organization, and it will not be tolerated here. I am hereby terminating you effective immediately.

I have little question that Respondent could have discharged Connolly for a variety of legitimate reasons during his term of employment. I will assume the worst about Connolly, and I think that is probably warranted. There is no question that he has a problem of some variety, but I am not quite prepared to find, as Kelly charges, that Connolly was an alcoholic and a philanderer. He certainly had a temper, and from what I heard, it might be said say that he was somewhat paranoic and that he lacked solid judgment in some of his actions during election campaigns, unnecessarily hurting and, more importantly, antagonizing people who were vital to the success of his efforts and perhaps giving Kelly some justifiable reasons to doubt Connolly's wisdom. But Respondent discharged Connolly no earlier than October 31, or even October 28, the date of Reader's telegram to Connolly ordering him to come to Kelly's office; and this proceeding involves whether Respondent really relied on all the various acts of misconduct, going back a number of years, or whether the timing of the discharge shows that there were other reasons, violative of the Act, which Respondent is trying to hide.

Counsel for the General Counsel contends that he established a prima facie case of a violation. I agree. Connolly announced that he was going to run for office in May 1988. A month before the nominations were to be held, which was the commencement of the period for campaigning for office, Connolly was assigned to Tennessee to run a program that Reader estimated would last for 5 or 6 months, with instructions that he was not to come home every week. He was not assigned earlier, although Orr had requested that the program begin in July or August, well before the beginning of the TVA negotiations. When Connolly was finally assigned, the negotiations had begun; and all the people who would have been important for Connolly to deal with were engaged in that more important function. So Connolly, assigned from Massachusetts, could do nothing on the program he was specially assigned to institute. Instead, Orr asked him to negotiate a contract with a small local company. That was the kind of job that would not have warranted him to be reassigned to Tennessee, and certainly the kind of job that would not have required the International to institute a major change of rules to prohibit Connolly from returning home on the weekends, which would have hampered Connolly's efforts to conduct an effective election campaign. The reassignment to Tennessee at this time becomes even more suspect because no one could understand why Connolly was selected for this particular project. Reader questioned the wisdom of Connolly's assignment, but he could not talk Kelly out of it. There is enough here to support the inference that Connolly was assigned to this project at this time, and under the rules not to return home, because he was running for office.

Still, however, Respondent did not discharge him until sometime later. In the meantime, Connolly was formally nominated and within 2 days Kelly wrote him of the consequences of holding two positions and Reader sent a new directive permitting travel home only every other week. Connolly had discussed with the two other union representatives Kelly's letter forbidding him to return home, leading to his October 12 letter protesting the new work rule; and then the election was held and he lost and he protested the conduct of that election, and only after that was he discharged. The timing of those activities, and the reactions of Kelly in sending Connolly out to pasture and forbidding him to come home and then firing him only after Connolly threatened to protest the conduct of the election is enough to persuade me that at least the cause of his discharge was that he ran for local office and he protested Kelly's attempt to forbid him to return home to run his election campaign.

The International contends that the Act does not protect Connolly's attempt to run for office in Local 6, but I can find no reason why it should not. Connolly was a member of that local, but he was an employee of the International. As an employee, he was entitled to engage in self-organization and to all the other rights provided by Section 7 of the Act. *Garment Workers*, 131 NLRB 111, 112 fn. 2 (1961); *American Federation of Labor*, 120 NLRB 969 (1958); *Air Line Pilots Assn.*, 97 NLRB 929 (1951). He was entitled to engage in protected and union activities; and Respondent was prohibited under Section 8(a)(1) and (3) of the Act from doing anything to discourage him from engaging in those activities. *Garment Workers*, 142 NLRB 82 (1963), moddified

339 F.2d 126 (2d Cir. 1964). The fact that Respondent is also a labor organization does not negate my finding, because here it is an employer and the Act applies to it as it does any other employer. *Office Employees Local 11 v. NLRB*, 353 U.S. 313 (1957).

Connolly was disciplined not because he ran for office in the International, but because he exercised his right as a member of Local 6 to run for office in that Local. The Board has previously found that running for office is a fundamental right protected under Section 7 and the infringement of which is prohibited by Section 8(a)(1) of the Act.[1] *Welfare & Pension Funds*, 251 NLRB 1241 fn. 2 (1980); *Jacobs Transfer*, 201 NLRB 210 (1973); *Carpenters Local 22 (Graziano Construction)*, 195 NLRB 1 (1972). Although I have some doubts about whether, under current Board law, such activity is concerted—the Board's decisions do not deal with that issue—I conclude that running for office in another union election is patently union activity and that Respondent's discharge of Connolly for that reason violates Section 8(a)(3) and (1) of the Act.

Respondent contends that Connolly could not have been disciplined for this reason because International representatives were allowed to hold dual positions, as shown by the record and some further admissions about Orr made in Respondent's brief. It may well be accurate that Respondent had such a policy, but apparently no one objected to any other representative running for local office. Here, Kelly objected that Connolly would have much difficulty in holding both jobs. Furthermore, there is sufficient evidence to infer that Mahoney objected to Connolly's running for office and that the International did not apply its usual policy to Connolly because of that objection. He was the exception.

Because Connolly was running for office in Local 6, *Finnegan v. Leu*, 456 U.S. 431 (1982), which Respondent contends supports its position, is inapposite. That involved Title I of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) and its guarantee of equal voting rights and rights of free speech and assembly to every member of a labor organization, and Title VI, which made it unlawful for a union to fine, suspend, or discipline any of its members for exercising rights protected under that act. There, the union's appointed business agents were discharged by the new president of the local, after the incumbent whom the agents had supported was defeated. The court held that the LMRDA's legislative history showed that Title I was intended to protect rank-and-file union members, and not appointed officials, and Title VI's protection against discipline referred only to retaliatory actions that affected a union member's rights or status as a member of the union. Obviously, that decision involves solely rights under the LMRDA, whereas here the concern is with rights under Section 7 of the Act. The Board has clearly held that certain protections of the LMRDA are to be read into the Act and that discrimination against an employee because he engaged in intraunion activity impairs his rights as an employee under the Act. *Jacobs Transfer*, supra; *Carpenters Local 22 (Graziano Construction)*, supra.

I also conclude that Connolly's protest of Kelly's order that he was forbidden to return home on the weekends was protected and concerted activity. When Connolly received Reader's letter informing him of the new policy, he immediately told both Kirby and Orr, both of whom liked the order no more than Connolly did and both of whom protested directly to Kelly by telephone, as did Connolly by letter. That letter advised that he had discussed the directive with some of the staff and complained that the order would alter ''our life styles'' and assumed, because there was otherwise no saving of money to Respondent, that the directive was ''null and void.''

Respondent alleges that Connolly was not engaged in protected and concerted activities and that his letter, by regarding the directive that he remain out of town over the weekends as ''null and void,'' constituted insubordination. However, I read Connolly's letter as only a complaint about the new policy, particularly that it was not justified by any legitimate reason, such as saving money, and that it seemed to be imposed only against Connolly and only as a method of keeping him away from home in retaliation for his attempt for run for office in Local 6, in which event it was null and void. That does not mischaracterize Board law, which does not permit an employer from imposing new terms and conditions of employment to retaliate against employees who are engaged in acts protected by Section 7 of the Act. *John Dory Boat Works*, 229 NLRB 844, 849–850 (1977); *Reeves Bros.*, 207 NLRB 51 (1973). Furthermore, I do not read his letter as a declaration that he was denying the power of Respondent's president to execute such a directive for a legitimate reason. Rather, Connolly was merely questioning, albeit in a rather impolitic manner, the propriety of the rule. As such, his letter was protected.

I also conclude that it was concerted, at least regarding to the effect of the rule, which was to bar all of Respondent's representatives from going home over the weekends. He had talked to the other two representatives about the new rule, and they appeared to disagree with it. Although, admittedly, no one authorized Connolly to write to Kelly and to say what he did, Connolly was expressing all of their concerns with the effect of the directive. His letter was an outgrowth of his earlier conversations with both Orr and Kirby and was ''a continuation of that earlier protected concerted activity.'' *Jhirmack Industries*, 283 NLRB 609 fn. 2 (1987). Contrary to Respondent's contention, Connolly did not need express authorization from the other representatives in order to be engaged in concerted activities. Connolly's concerns were a logical outgrowth of the concerns of Orr and Kirby, and that is sufficient Board law to supply the authority of the other two employees to his activity. *Alchris Corp*, 301 NLRB 182 fn. 4 (1991); *Salisbury Hotel*, 283 NLRB 685, 687 (1987); *Every Woman's Place*, 282 NLRB 413 (1986), enfd. 833 F.2d 1012 (6th Cir. 1987).

I conclude that the General Counsel has met his burden and proved a prima facie unfair labor practice, considering Respondent's assignment of Connolly to Tennessee, the initial bar upon his travel, the two October 6 letters about running for office and traveling home, his protests about the new rule and the election and Mahoney's conduct, and the timing of the discharge. However, the analysis of the facts

[1] Strangely, although the complaint alleges a violation of Sec. 8(a)(3) of the Act, this particular allegation was not alleged with any specificity. Instead, the complaint alleges only Connolly's October 12 ''concerted'' complaint about remaining out of town. However, the issue regarding Respondent's alleged discharge of Connolly because he ran for local office was extensively litigated and briefed by the parties and is ripe for decision.

in this proceeding must take into account *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983), which provides that Respondent may prove by a preponderance of the evidence that it would have taken the same action against Connolly as it took, regardless of whether it was also illegally motivated by the employee's union or protected activities.

I have no question that Connolly was guilty of much conduct which might have induced any employer to terminate him. Connolly bred problems. But that is not the issue here. The issue is what motivated Respondent to discharge Connolly. On this issue, Respondent did not meet its burden and actually strengthened the General Counsel's case because of the unfortunate circumstance that its witnesses Respondent could not get their facts in order. They could not agree on the timing of the discharge or on the reasons. Reader's letter discharging Connolly cites a variety of reasons for the discharge, but Reader testified that the decision had been made on October 6. Then Reader had called Connolly to remind him of Kelly's instructions not to travel home on the weekends and that Kelly wanted him to stay in Chattanooga that weekend. Connolly declined to do so, and Reader reported that to Kelly, who said ''all right, that's it, prepare the papers.'' Although Reader stated that he prepared the discharge letter during the ''next week or so,'' it took a month for the letter to be signed and delivered, a rather casual method of handling the discharge of one who had been insubordinate to the president of an international labor organization. I find that insubordination was not the true cause of the discharge, when Respondent waited for almost a month to take action, even to let Connolly know that he was an employee who was expected to obey instructions from his superiors.

The delay is in sharp contrast with Respondent's earlier conduct. The same day that Reader recalled that Kelly had instructed him to prepare the papers and only 2 days after Connolly was nominated for Local 6 office, Kelly sent Connolly his letter advising how the jobs of an international representative and a local officer conflicted. That letter was a rather implicit threat that Connolly could not perform both jobs, and his success in the local's election would jeopardize his employment with the International. Also, that same day, Reader sent his directive permitting travel home every other weekend. Thus, the General Counsel's case was supported by Respondent's reactions of October 6. Respondent was concerned not with Connolly's insubordination but with his running for office, the very gist of the complaint.[2]

Kelly's testimony contradicted Reader's, was internally inconsistent and contradictory, and in important respects made little sense. Kelly flatly denied Reader's testimony, stating that he could not even recall that Reader relayed that Connolly was refusing to carry out Kelly's direction. To him, therefore, Connolly's initial ''insubordination'' could not have been the reason for the discharge. However, Kelly could not arrive at any consistent reason for his action. He first testified that he was provoked to discharge Connolly upon receipt of Connolly's letter declaring Kelly's letter ''null and void.'' Although Kelly identified the date as October 25, 26, or 27, Connolly's letter containing that language is the letter of October 12, which Kelly must have received before October 19, because that is the date that Kelly replied to Connolly. In his reply, Kelly wrote only that he thought that he and Connolly ought to get together soon, which Respondent's brief concedes was not an indication that Connolly's discharge was imminent.

Later in his testimony, Kelly referred to Connolly's letter calling him ''cute''[3] as the one which precipitated the discharge. The letter that Kelly identified was dated October 24 and was obviously different from the one which he first identified caused him to act. Kelly's failure to recall what prompted him to discharge Connolly, when combined with Reader's contradictory testimony, leads me to find that these are not credible witnesses and that they have not supplied under *Wright Line* the preponderance of the evidence sufficient to overcome the General Counsel's prima facie case. I cannot find from their narrations what prompted the decision and, even if I found some cause, I am left with an utter void of why the International waited as long as it did to discharge Connolly.

In addition to Respondent's difficulties in explaining the timing of its discharge of Connolly, Kelly in particular had substantial problems in articulating why he did what he said that he did. Each action that was explained to cure certain of Connolly's conduct was actually framed to do something else. Nothing was written for the purpose of resolving what the words clearly stated. For example, the letter prohibiting weekend travel was not to be applied to Orr or to Kirby. Their costs of returning home were less to the International than if they remained at their work. It applied only to Connolly, and, strangely enough, not solely for the purpose which the letter seems to be trying to correct. According to Kelly, the memorandum was written because of Connolly's trips home while on assignment. But Kelly also explained that Connolly was a worker who started to work on Tuesday and ended his week on Thursday. There is some evidence which supports Kelly's suspicions, but only as late as October 19 did he charge Connolly with this misconduct. Kelly could have written to Connolly to direct him to work a full week. He did not have to send out a general directive to all the International representatives, nor did he have to send out a letter requiring them to remain at work on the weekends.

In like fashion, Kelly explained that his letter of October 6 advising Connolly of the difficulties of maintaining his job with the International if he were to be an officer of Local 6 was not intended to make him think twice about running for office. Instead, Kelly wanted Connolly to know that Kelly knew about Connolly's habit of ducking work by hiding out in the Local's office pretending to perform functions there. If that is so, Kelly's letter was a curious way to inform Connolly that he had not been performing all the assignments that he was required to do. Furthermore, if Kelly knew that Connolly had been hiding out so that he would not be

[2] Obviously, the 8(a)(1) allegation of concerted and protected activities would not be supported by Reader's admission. By October 6, Connolly had not talked with either Orr or Kirby to express his complaints about Kelly's new directive, and neither Kelly nor Reader would have had any idea that Connolly was engaged in a concerted activity.

[3] Kelly's testimony was inaccurate and distorted. Connolly never called Kelly ''cute.'' That word was first used by Kelly in calling Connolly's analysis of his savings to the International a ''cute set of figures.''

sent to other places, why he had not warned or disciplined Connolly for his misconduct long before making known his wishes to run for office? Similarly, while Kelly expressed this rationale, he was also testifying that Connolly had not the slightest chance of winning the election. If that was truly his belief, there was no reason for him to write to Connolly warning of the difficulties of maintaining two jobs. I cannot credit Kelly's explanations.

There are a number of other significant problems about Respondent's defense. The first is that Respondent dwelled on the UMass campaign. No matter how badly run and no matter how inept were Connolly's decisions, that campaign ended in 1986 and, I find, it was so remote it did not prompt Kelly or anybody else to discharge Connolly. The second is that, although Connolly's employment was not absolutely free of crisis, he remained an International representative, servicing locals of Respondent, and carrying out the functions for which he was employed, without reprimand or warning. At the end of 1986 Respondent gave Connolly a small increase, which Connolly thought was a reflection of Respondent's disappointment with the results of the UMass campaign; but the letter is ambiguous and can be read that the small increase was given because of the overall financial condition of the International, and not because Connolly's performance was bad. In any event, there was no proof supplied by Respondent that the bonus given to Connolly was any less than that given to any other International representative.[4] Otherwise, he was given raises in pay and was assigned to the one-on-one program allegedly because of his senior status, his ability to deal with complex issues, and his ability to write and to articulate the benefits of union membership. (These reasons contrast sharply with Kelly's later testimony that, before being assigned to Tennessee, Connolly had never done any real work in years, despite warnings and cajoling.) Third, to the extent that there was testimony about Connolly's shortcomings, including drinking, I simply do not credit Kelly's explanation that, because he had some problem with alcohol 15 years before, he sympathized with Connolly's problems with alcohol and permitted him to perform badly for years.

For somewhat the same reasons, to wit, that Kelly's testimony does not make sense, so too are the disclaimers of knowledge that Connolly was going to run for local office. Mahoney was not only an officer of the Local but also a vice president of the International and a member of its executive board. Mahoney admitted that he told Kelly that Connolly had placed his name in nomination, an admission that Respondent itself finds unremarkable. In its brief, it states: ''[A]ny rational observer familiar with the labor movement would hardly find it unusual in the normal course of events for a local union president who wanted to return his local incumbent slate to office to notify the president of his international union that an international senior staff representative was a candidate for local union office.''

What I find is unusual and highly improbable is Mahoney's denial that he told Kelly of Connolly's intentions when Connolly first made them known. After all, Connolly was an International representative who announced to Mahoney that he was going to run against a member of Mahoney's team, the first time that there was a contested election for Local 6 office. It is most probable that Mahoney, who told Connolly that he was in for a fight, would have wanted to put a stop to that election effort at its inception and asked Kelly to ensure that Connolly did not run. However, Kelly must have known that it would have been imprudent, if not illegal, to threaten Connolly with the loss of his job, and so Kelly did all that he could to help Mahoney, without openly saying so. Thus it was that all of Kelly's efforts were directed to making Connolly's running for office uncomfortable, including the assignment to Tennessee, the ban on traveling on the weekends, and the implicit threat that local office and international representation simply did not get along together.

The concerted activity of protesting the newly adopted rule, which seemingly was directed solely at Connolly and was exposed as such when Kelly caved in to the complaints of the two other representatives, merely made Kelly more adamant in his wish to get rid of Connolly. I might otherwise have doubts that Kelly discharged Connolly for his concerted protest, but Kelly testified that he did, that it was when Connolly declared his order ''null and void'' that he told Reader to prepare a letter to discharge Connolly. Because I have found Connolly's letter protected, Kelly's testimony constitutes an admission that the complaint was a reason for the discharge. Respondent supplies no good reason why I should not take Kelly at his word; and, although the narrations of Reader and Kelly are certainly not mutually corroborative regarding the dates when Kelly gave his instructions to terminate Connolly, this clearly supplies a reason for Kelly's action.

Finally, Respondent contends that Connolly's conduct in disputing the discharge was so outrageous that his discharge was justified. When Connolly uttered his curses, he had already been terminated and his reaction, although obscene, was a reaction to Respondent's unfair labor practice. Even though his language was offensive and vulgar, it was not so extreme ''as to render the individual unfit for further service.'' *Dreis & Krump Mfg.*, 221 NLRB 309, 315 (1975).

Kelly endured Connolly's conduct for years, and I see no reason why this disagreement cannot be patched up as in the past. Connolly is fit for further service, but this decision is not intended to condone much of his activity. He has given Respondent ample ammunition in the past to discipline him, and for some reason that was not exercised. Here, he will be reinstated to his job solely because Respondent did not present a credible case to overcome the General Counsel's. In that sense, Connolly has ''lucked out.'' But should his conduct continue, he may not be so lucky the next time.

Because Respondent has not proved by credible testimony that it acted for any reasons other than ones which violated the Act, I conclude that Respondent's reasons were pretexts and that there was no reason for discharging him other than his protected and concerted activities. In any event, Respondent has not sustained its burden of proof under *Wright Line*.

The activities of Respondent set forth above, occurring in connection with Respondent's operations described above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to

[4] Although Respondent contends that Connolly was demoted from his position of assistant director of organization, Reader's November 4, 1988 letter states that Connolly requested to be relieved from that position, consistent with Connolly's testimony that he did not like the greater responsibilities of that job.

lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

THE REMEDY

Having found that Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. Specifically, I shall recommend that Respondent offer Connolly immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges previously enjoyed, and make him whole for any loss that he may have suffered as a result of Respondent's discrimination against him. Backpay shall be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), and interest shall be added thereto, to be computed in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[5]

ORDER

The Respondent, Office and Professional Employees International Union, AFL–CIO, New York, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Discharging its employees because they engage in protected and concerted and union activities which are protected by Section 7 of the Act.

(b) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer John B. Connolly immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings he may have suffered as a result of its discrimination against him in the manner set forth in the section of this remedy section of this decision.

(b) Expunge and remove from its files any reference to the unlawful discharge of Connolly on November 4, 1988, and notify Connolly in writing that this has been done and that evidence of his illegal discharge will not be used as a basis for future personnel action against him.

(c) Preserve and, on request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its place of business in New York, New York, copies of the attached notice marked ''Appendix.''[6] Copies of the notice, on forms provided by the Regional Director for Region 1, after being signed by Respondent's representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[5] If no exceptions are filed as provided by Sec. l02.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. l02.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT discharge our employees because they engage in protected and concerted and union activities which are protected by Section 7 of the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer John B. Connolly immediate and full reinstatement to his former position or, if that position no longer exists, to a substantially equivalent position, without prejudice to his seniority or other rights and privileges, and make him whole for any loss of earnings he may have suffered as a result of our discrimination against him, with interest.

WE WILL remove from our files any reference to the unlawful discharge of John B. Connolly on November 4, 1988, and notify him in writing that this has been done and that evidence of his illegal discharge will not be used as a basis for future personnel action against him.

OFFICE AND PROFESSIONAL EMPLOYEES
INTERNATIONAL UNION, AFL–CIO